

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

ROY ARTERBURY, DELWIN COBB, and
CAVINS CORPORATION,

Plaintiffs,

v.

ODESSA SEPARATOR, INC.,

Defendant.

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Case No. 5:16-CV-00183-RWS-RSP

ORDER

The above entitled and numbered civil action was referred to United States Magistrate Judge Roy S. Payne pursuant to 28 U.S.C. § 636. Before the Court is the Magistrate Judge's Report and Recommendation (Docket No. 113), which recommends that the Court deny Defendant Odessa Separator, Inc.'s Motion to Dismiss (Docket No. 57) and Motion for Summary Judgment (Docket No. 61).

In the underlying motion to dismiss, Defendant argues that Plaintiff Cavins Corporation is not an exclusive licensee of the Patent-in-Suit and, therefore, lacks standing to be a party to this case. Docket No. 57 at 1. In its motion for summary judgment, Cavins challenges all plaintiffs' ability to recover lost profits, partially based on Cavins' alleged lack of standing and partially on the sufficiency of the pleadings. *See* Docket No. 61.

As to standing, the Magistrate Judge first noted that Cavins sufficiently plead its own standing. Docket No. 113 at 6. Magistrate Judge Payne then concluded that the facts "suggest that the license agreement granted exclusivity to Cavins" and there was at least a factual dispute as to whether Cavins was the exclusive licensee of the Patent-in-Suit. *Id.* at 7, 10. For damages,

the Magistrate Judge determined that the pleadings supported Plaintiffs' damages theories. *Id.* at 10–11. Accordingly, the Magistrate Judge recommended that the Court deny both motions.

The parties did not file objections to the Report and Recommendation. Consequently, the parties are not entitled to *de novo* review by the District Judge of those findings, conclusions and recommendations, and except upon grounds of plain error, they are barred from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the District Court. 28 U.S.C § 636(b)(1)(C); *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc).

Nonetheless, the Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge and agrees with the Report of the Magistrate Judge. *See United States v. Raddatz*, 447 U.S. 667, 683 (1980) (“[T]he statute permits the district court to give to the magistrate’s proposed findings of fact and recommendations ‘such weight as [their] merit commands and the sound discretion of the judge warrants,’ ”) (quoting *Mathews v. Weber*, 23 U.S. 261, 275 (1976)).

Accordingly, Magistrate Judge Payne’s Report and Recommendation (Docket No. 113) is hereby **ADOPTED**. Defendant Odessa Separator, Inc.’s Motion to Dismiss (Docket No. 57) and Motion for Summary Judgment (Docket No. 61) are **DENIED**.

SIGNED this 22nd day of February, 2019.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE